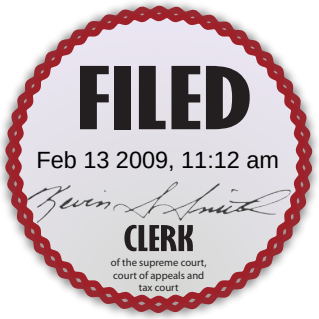

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IN THE
COURT OF APPEALS OF INDIANA

JOHN MAVRIKIS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 29A04-0805-CV-305
	)	
KEVIN KUYT,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE HAMILTON SUPERIOR COURT
The Honorable J. Richard Campbell, Judge
The Honorable David K. Najjar, Magistrate
Cause No. 29D04-0803-SC-458

February 13, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

John Mavrikis appeals a small claims court judgment in favor of Kevin Kuyt. Mavrikis asserts he is entitled to one month's rent for a property for which no lease was signed. Because Mavrikis did not present his statutory argument to the trial court before the court rendered its final judgment, we may not consider it on appeal. Accordingly, we affirm.

FACTS AND PROCEDURAL HISTORY

The facts most favorable to the judgment are that Kuyt and his family were moving from Huntsville, Alabama to Carmel, Indiana. On February 1, 2008, after researching homes on the internet, Kuyt called Mavrikis about one of Mavrikis' rental homes. Mavrikis informed Kuyt that the home could be moved into without delay. Mavrikis claimed other renters were interested in the property and required Kuyt to send the security deposit, first month's rent, and last month's rent in order to hold the property until Kuyt could arrive in Indiana to inspect it. After receiving $3,450.00 from Kuyt on February 4, 2008, Mavrikis e-mailed to Kuyt a lease for the property, which Kuyt was to sign after inspecting the property. The next day, Mavrikis informed Kuyt of a broken window in an upstairs bedroom and of the need to clean the carpets; however, Mavrikis assured Kuyt that both problems would be resolved before the Kuyts' arrived on February 8th.

When Kuyt and his family arrived at the rental property around 12:30 p.m. on Saturday, February 8, they unloaded some of their belongings into the garage. As they inspected the house, they found the window had not been fixed and the carpets had not been cleaned. A window was broken in the garage, the kitchen cabinets and countertops

were damaged, and the deadbolt lock was missing from the front door. The carpet cleaners arrived around the same time as the Kuyts, but they were unable to clean the carpets because Mavrikis had never turned the water back on after winterizing the house. Around 2 p.m., when the water company turned on the water, a number of pipes burst in and under the house, which required the water be turned off at the water main. Mavrikis left the property.

Kuyt and his family left to look for another place to live. Kuyt called Mavrikis, told him he would not be renting Mavrikis' home because it was unacceptable, and demanded return of the $3,450.00. Mavrikis said he would return the money on Monday, and he insisted Kuyt get his property out of the house immediately. Kuyt removed all of his property by 9 p.m. on February 8th.

Mavrikis refused to return Kuyt's money. Kuyt sued in small claims court, asserting he was entitled to a refund of his money because Mavrikis misrepresented the habitability of the property and no lease had been signed. Mavrikis testified he was able to rent the property five weeks after February 8th; based thereon, he argued he was entitled to $1,937.50 from Kuyt for the five weeks he was unable to rent the property and $500 for attorney fees. (Tr. at 26, 29-29.) The court found and ordered:

> There never was a contract that was signed by both parties. There was never an agreement, there was never anything that legally bound either of these people to the property. Or more appropriately I should say bound the Kuyts to the property. They did pay $3400 and some change by Western Union to the defendant to hold the property. However no lease was ever signed, no lease was ever finalized, they did not rent the property. They decided not to rent the property and requested their money back. Whether or not Mr. Mavrikis agreed to return all or part of it he had no entitlement to any of it. Judgment is for the Plaintiffs in the amount of $3819.94.

(*Id*. at 29-30.)

After the court announced its judgment, counsel for Mavrikis said: "Your Honor, by operation of statute when there is no written lease it becomes a 30 day, month to month property lease. And because of that we believe the Court's decision is incorrect in that it should be at least a 30 day month to month lease." (*Id*. at 30.) The court declined to modify its judgment.

DISCUSSION AND DECISION

Mavrikis argues the small claims court should have awarded him one month's rent pursuant to Ind. Code § 32-31-1-2, which provides: "A general tenancy in which the premises are occupied by the express or constructive consent of the landlord is considered to be a tenancy from month to month."

However, a "party may not raise an issue for the first time in a motion to correct error or on appeal." *Troxel v. Troxel*, 737 N.E.2d 745, 752 (Ind. 2000). When a party waits until after the court enters its judgment to raise an argument, the argument is waived. *See Smith v. State*, 809 N.E.2d 938, 942 (Ind. Ct. App. 2004) (defendant waived alleged error when he failed to raise argument "prior to or during his trial"), *trans. denied* 822 N.E.2d 972 (Ind. 2004); *VanWinkle v. Nash*, 761 N.E.2d 856, 860 (Ind. Ct. App. 2002) (party waived alternative argument raised for the first time in a motion to correct error). During trial Mavrikis chose to assert only that he was entitled to five weeks of rent because Kuyt breached the lease. Only after the court entered its judgment did he assert a right to recover one month's rent for a month-to-month tenancy, and at no point

did he inform the court which statute he was relying on to justify that alleged month-to-month tenancy. Accordingly, we will not consider this argument on appeal.

Affirmed.

ROBB, J., and NAJAM, J., concur.